

Lim Thian Hok v Minister of Home Affairs & Anor and other applications

HIGH COURT (PENANG) — CRIMINAL APPLICATION NOS 44-65-92,
44-190-90, 44-72-91, 44-100-91, 44-127-91, 44-130-91, 44-133-91, 44-
159-91, 44-198-91, 44-219-91 AND 44-39-92

VINCENT NG JC

19 SEPTEMBER 1992

Constitutional Law — Preventive detention — Detention order — Grounds for detention — Detention order stating grounds of detention in the alternative — Dangerous Drugs (Special Preventive Measures) Act 1985 s 6(1) — Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1)

Constitutional Law — Preventive detention — Detention order — Grounds for detention — Whether grounds appropriately or satisfactorily explained to detenu

The applicants were detained under the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') except for the applicant in Criminal Application No 44-65-92, who was detained under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'). All the applicants challenged their detention orders on the ground that it stated their detention in the alternative under the respective legislation they were detained. Secondly, the grounds of detention were not explained to the applicants in a language or dialect understood by them.

Held, allowing the application in Criminal Application Nos 44-190-90, 44-72-91, 44-100-91 and dismissing the other applications:

- (1) The court is precluded from re-examining the subjective satisfaction of the Minister and also the factual basis relied upon in reaching his decision. This is further fortified by the insertion of s 11C by Act A738 to the Act.
- (2) The two grounds for detention in s 6(1) of the Act should be read conjunctively as both alternatives refer to one and the same object, being the trafficking in dangerous drugs. Therefore, the detaining authority could not be said to have made the detention order vaguely or mechanically.
- (3) Section 4(1) of the Ordinance should be read disjunctively since it confers on the Minister power to issue a detention order based on any one of the two grounds therein. Since the Ordinance is silent on the form of the detention order, it should be worded to inform the detenu under which limb he is being detained. This requirement is mandatory to dispel any challenge to the detention order being vague or passed mechanically by merely reproducing the language of s 4(1) of the Ordinance.
- (4) The applicants will be released if the grounds of their detention are not appropriately or satisfactorily explained or informed either

- A upon their arrest, upon service of the detention order or when they are brought to the place of detention. It is not fatal if more than one language or dialect is used to explain or inform the detenu as long as he understands the grounds of his detention.

Per curiam:

- B Section 366 of the Criminal Procedure Code (FMS Cap 6) enjoins on the applicant to state in his affidavit so far as they are known, the facts relating to such detention with the object of satisfying the court. Therefore, the applicant should state all matters relevant to his detention in his supporting affidavit and is not permitted to raise matters outside the ambit of his affidavit.
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[Bahasa Malaysia summary]

- D Pemohon telah ditahan di bawah Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta itu') kecuali pemohon di dalam Permohonan Jenayah No 44-65-92, yang telah ditahan di bawah Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 ('Ordinan itu'). Kesemua pemohon telah mempertikaikan penahanan mereka di atas alasan bahawa perintah tahanan menyebut tahanan mereka dalam alternatif di bawah Akta dan Ordinan tersebut untuk kes masing-masing. Kedua, alasan penahanan tidak diterangkan kepada pemohon dalam bahasa atau loghat yang difahami oleh mereka.
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Diputuskan, membenarkan permohonan dalam Permohonan Jenayah No 44-190-90, 44-72-91, 44-100-91 dan menolak permohonan yang lain:

- F (1) Mahkamah tidak dibenarkan mengkaji semula keputusan subjektif Menteri dan juga fakta yang menjadi asas bagi keputusan beliau. Ini diperkukuhkan dengan penambahan s 11C melalui Akta A738 kepada Akta itu.
- G (2) Kedua-dua alasan penahanan di bawah s 6(1) Akta itu harus dibaca bersama kerana kedua-dua alternatif merujuk kepada satu objek yang sama, iaitu mengedar dadah berbahaya. Oleh itu pihak yang menahan tidak boleh dikatakan telah membuat perintah penahanan secara kasar atau secara automatik.
- H (3) Seksyen 4(1) Ordinan itu harus dibaca berasingan kerana ia memberi kuasa kepada Menteri itu untuk mengeluarkan suatu perintah penahanan berdasarkan kepada salah satu alasan di dalamnya. Perintah penahanan harus menyebut di bawah 'limb' yang mana seseorang tahanan ditahan oleh kerana Ordinan itu tidak menyebut cara perintah penahanan itu harus dikarang. Ini adalah mandatori untuk mengelak sebarang cabaran terhadap perintah penahanan itu atas alasan bahawa ia tidak jelas atau dibuat secara automatik menurut bahasa s 4(1) Ordinan itu.
- I (4) Pemohon akan dibebaskan jika alasan penahanan mereka tidak diterangkan dengan memuaskan atau secukupnya sama ada dalam masa penahanan, apabila perintah penahanan disampaikan atau

apabila pemohon dibawa ke tempat penahanan. Tidak menjadi 'fatal' jika lebih daripada satu bahasa atau loghat digunakan untuk menerangkan atau memberitahu orang tahanan alasan penahanan itu asalkan beliau memahaminya.

Per curiam:

Seksyen 366 Kanun Acara Jenayah (FMS Cap 6) mewajibkan supaya pemohon menyatakan dalam afidavitnya setakat mana yang diketahui, fakta-fakta berkenaan dengan penahanan tersebut dengan tujuan meyakinkan mahkamah. Oleh yang demikian, pemohon harus menyatakan semua perkara yang relevan kepada penahanannya dalam afidavitnya dan tidak dibenarkan menimbulkan hujah-hujah yang di luar afidavitnya.]

Notes

For cases on preventive detention, see 10 *Mallal's Digest* (4th Ed) paras 1029–1136.

Cases referred to

- 1 *Ibrahim bin Ismail v Menteri Hal Ehwal Dalam Negeri Malaysia* (Criminal Application No 44–170–90) (unreported) (folld)
- 2 *Koh Yoke Koon v Minister for Home Affairs, Malaysia & Anor* [1988] 1 MLJ 45 (refd)
- 3 *Puvaneswaran v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1991] 3 MLJ 28 (refd)
- 4 *Poh Chin Kay v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor and other appeals* [1990] 2 MLJ 297 (refd)
- 5 *PP v Koh Yoke Koon* [1988] 2 MLJ 301 (refd)
- 6 *Ex parte Johannes Choeldi & Ors* [1960] MLJ 184 (refd)
- 7 *R v Secretary of State for Home Affairs, ex p Lees* [1941] 1 KB 72 (refd)
- 8 *Ananta Mukhi @ Ananta Hari v State of Bengal* [1972] 1 SCC 580 (refd)
- 9 *Kishori Mohan Bera v The State of West Bengal* [1972] 3 SCC 845 (refd)
- 10 *Karam Singh v Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129 (refd)
- 11 *Ichhu Devi Choraria v Union of India* [1980] 4 SCC 531 (not folld)
- 12 *Goh Thong Hua v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* (Criminal Application No 44–64–90) (unreported) (folld)
- 13 *Liew Kim Swee v Menteri Dalam Negeri Malaysia & Anor* [1991] 2 CLJ 53 (folld)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) s 366
 Dangerous Drugs (Special Preventive Measures) Act 1985 s 6(1)
 Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1)

A *Karpal Singh (Karpal Singh & Co) and V Shanmugam (Shanmugam & Co)* for the first applicant.

Karpal Singh (Karpal Singh & Co) for the ten other applicants.

Mahmud bin Haji Abdullah and Noor Bahari (Senior Federal Counsel) for the respondents.

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Cur Adv Vult

Vincent Ng JC: At the request of both parties, all the above criminal applications were heard together as all of them (according to the parties) concerned, inter alia, the same common crucial issue as decided in Penang High Court Criminal Application No 44-170-90, from which there is a current pending appeal. The above criminal applications have been adjourned on several occasions to await the disposal of the said pending criminal appeal.

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The applicant in the first application was represented by Mr Karpal Singh and Mr V Shanmugam and the applicants in all the other ten applications were represented by Mr Karpal Singh, while the respondents were represented by senior federal counsel Encik Mahmud bin Haji Abdullah and Encik Noor Bahari.

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These are applications for writs of habeas corpus which, as counsel have agreed at the outset of the hearing, are confined to only two grounds.

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Firstly, the applicants had challenged the validity of the detention orders on grounds that they were bad on their face due to non-compliance with:

(a) section 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'), in respect of Criminal Applications Nos 2-11 being CA Nos 44-190-90, 44-72-91, 44-100-91, 44-127-91, 44-130-91, 44-133-91, 44-159-91, 44-198-91, 44-219-91 and 44-39-92 ('the ten applications'); and

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(b) section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'), in respect of the first criminal application, being CA No 44-65-92 ('the first application').

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Section 6(1) of the Act states as follows:

Whenever the Minister, after considering —

(a) the complete report of investigation submitted under subsection (3) of section 3; and

(b) the report of the Inquiry Officer submitted under subsection (4) of section 5,

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is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to a 'detention order') direct that such person be detained for a period not exceeding two years.

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Section 4(1) of the Ordinance states:

If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should

be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a 'detention order') directing that that person be detained for any period not exceeding two years.

Counsel for the detainees have sought to impugn the detention orders as such orders had stated both grounds of detention in the alternative, being:

- (i) in regard to the ten applications concerning s 6(1) of the Act, that the detainees 'has been or is associated with activity relating to or involving the trafficking of dangerous drugs'; and
- (ii) in regard to the first application concerning s 4(1) of the Ordinance, that the order had been made against the detainee 'with the view to preventing the detainee from acting in any manner prejudicial to public order or the suppression of violence or the prevention of crime involving violence'.

The applicants' ground as in (i) above (in respect of the ten applications) has already been decided by Edgar Joseph Jr J (as he then was) in the case of *Ibrahim bin Ismail v Menteri Hal Ehwal Dalam Negeri Malaysia*.¹ It was submitted by Mr Karpal Singh that the learned judge held in that case that only if procedural requirements are contravened the court could intervene, but not when technical requirements are not complied with. I was urged to differ from that decision.

After having read the judgment, and considering his decisions in, eg *Koh Yoke Koon v Minister for Home Affairs, Malaysia & Anor*² and *Puvaneswaran v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor*³ and a plethora of other decisions by the learned judge on habeas corpus, and his wide knowledge on the subject, I do not agree that that was what the learned judge held or meant especially in regard to the issue of technical requirements where the de minimis rule is inapplicable. Neither do I conceive nor was it suggested by counsel that the learned judge was unaware of cases, eg *Poh Chin Kay v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* and other appeals⁴ See also *PP v Koh Yoke Koon*⁵ and *Ex parte Johannes Choeldi & Ors*⁶ (concerning technical defects), an authority which even s 11C(1) of the Act and s 7C(1) had not sought to negate.

Rather, in *Ibrahim bin Ismail*,¹ Edgar Joseph Jr J (as he then was) had said and I quote: 'Moreover, it appears to me that the argument of counsel seeks to impugn, at least indirectly, the subjective satisfaction of the Deputy Minister, a matter which is not open to judicial review ever since *Karam Singh* [[1969] 2 MLJ 129].' He further said: 'The position is now a fortiori in view of the insertion in the Act by Act A738 on 24 August 1989, of s 11C ...' I am in full agreement with this view and I adopt in toto, the same rationale and back-up authorities cited in *Ibrahim bin Ismail*¹ to dismiss the applicants' ground as in (i) above (on s 6(1) of the Act) in respect of the ten (10) applications. There is nothing in this point to back their applications.

I now turn to consider the applicants' ground as in (ii) above (concerning s 4(1) of the Ordinance) in respect of the first application which, according to counsel, is similar to the point at issue taken up by them in respect of s 6(1) of the Act (indeed the reason for the applications being heard together). Again, on this score, I am unable to agree with counsel. To

- A** hark back, and upon closer scrutiny of the ratio decidendi of all the relevant cases on this issue, I wholly supported the decision in *Ibrahim bin Ismail*¹ as I am of the view that the validity of the detention order in that case was dependent upon whether, in the expression ‘has been or is associated with any activity relating to or involving the trafficking in dangerous drugs’ contained in s 6(1) of the Act, the words underscored above should be read conjunctively or disjunctively. From the grammatical point of view and considering the normal flow of the language it is manifestly correct to say that the expression should be read conjunctively, as both alternatives refer to one and the same object, being the trafficking in dangerous drugs. In similar vein, we should consider the following expressions:
- B**
- C** (a) ‘To have been or to be a member of or to have been or be active in the furtherance of the objects of an organization ...’ as in *R v Secretary of State for Home Affairs, ex p Lees*.⁷
- (b) ‘Prejudicial to the security of the state or the maintenance of the public order’ as in *Ananta Mukhi @ Ananta Hari v State of Bengal*⁸ and in *Kishori Mohan Bera v The State of West Bengal*.⁹
- D** (c) ‘the maintenance of the public order therein or the maintenance of essential services therein’ as in *Karam Singh v Menteri Hal Ehwal Dalam Negeri Malaysia*.¹⁰

E Thus the two grounds for detention (only apparently so) in s 6(1) of the Act, ought rightly to be read conjunctively, and the detaining authority could not be said to have made the detention order vaguely or mechanically, merely reproducing the language of the said section of the Act.

F However, in regard to the first application, it seems quite clear to me that what is intended in s 4 (1) of the Ordinance is to confer on the Minister the power to issue a detention order based on any one of two grounds which, by its very nature of expression, should be read disjunctively.

The first limb of the section seeks to allow the Minister to detain:

- G** (a) a person who has acted in any manner prejudicial to public order (or, presumably social order in our society), which encompasses a whole gamut of variegated offences such as smuggling, running illegal lotteries, preaching religious heresy, or advocating communist or racist ideology, all of which do not necessarily involve violence; and

The second limb allows the Minister to detain:

- H** (b) a person, if it is necessary for the suppression of violence or the prevention of crimes involving violence, obviously an appropriate provision for curbing gangsterism, gangland warfare and gang violence — which necessarily involve violence or the use of violence, as emphasized in the second limb.
- I** Furthermore, the interpolation in s 4(1) of the Ordinance, of the following words (underscored by me) ‘... it is necessary that that person should be detained or that it is necessary for ... that that person should be detained ...’ (seemingly repetitive) shows a clear recognition by the legislature of the distinction between the first limb and second limb of the said section.

The two above grounds for detention in (a) and (b) are so distinct and different in specie one to the other, that reading them conjunctively does not make for grammatical sense or consistency in the flow of the language, in contradistinction to s 6(1) of the Act. There being nothing in the Ordinance requiring that the detention order should be in any particular form, the order should be so worded as to show, at least on its face, under which particular limb of s 4(1) the detenu is being detained.

Compliance with this essential and mandatory procedure is necessary in order to dispel the view that the order was vague or was passed mechanically by merely reproducing the language of s 4(1) of the Ordinance. Such matters are subject to the scrutiny of the courts though, it is settled that once ground (a) or (b) (or even both with the conjunction 'and' used) is selected by the Minister, his subjective satisfaction as to the manner of such selection and the allegations of fact to back-up the same is beyond question by the courts by virtue of s 7C of the Ordinance (s 11C of the Act).

It was also submitted by the senior federal counsel that even in the event that the court holds that the alternative grounds for detention in s 4(1) of the order should be read disjunctively, yet the written allegations of fact in support of the order, being lampiran E in the first application (notably, not mentioned in the detention order itself) could, when read in conjunction with the said detention order itself, be invoked to show that the Minister had selected ground (b) above — namely the second limb of s 4(1) of the Ordinance.

I do not agree with his submission in this respect, which appears to me to be an idle suggestion, as indeed s 7C of the Ordinance (and s 11C of the Act) has reduced the contents of lampiran E (ie factual grounds of detention) to that of a virtual non-entity in the eyes of the courts, which debars the courts from lifting the veil to peep or peek into or to examine the factual basis of the Minister's decision. Indeed, it is precisely for this reason that the courts have shown, in *Poh Chin Kay*⁴ and *Puvaneswaran*³ and a host of other cases, their vigilance in considering issues such as powers of preventive detention, matters of procedure and also the face of the detention order itself. It is settled law that the fundamental principle involved in the power given to the Minister to detain a person without trial cannot be exercised by inference. The power must be expressed, clear and unequivocal. See *Poh Chin Kay*.⁴ For the above reasons, I hold that the detention order made against the detainee in Criminal Application No 44-65-92 is invalid and bad on the face of it for want of compliance with s 4(1) of the Ordinance.

The second and final ground of the above applications in that the language or dialect used in explaining to the detenu at certain of the relevant three stages of the respective detentions — to ensure that the detenu understood the matters explained or informed — were either inappropriately or unsatisfactorily or not carried out by the officers concerned in accordance with the requirements.

On this issue, the nimble response from senior federal counsel Encik Noor Bahari was that the applicants were confined to the issues raised in their supporting affidavits; while he also conceded that unsatisfactory or unintelligible explanation or information to the detenu in any one of the

- A said three stages of the detention in the respective applications would be fatal to his case. The all encompassing, catch-all paragraph in the supporting affidavits namely: 'Wherefore upon the grounds aforesaid and any further grounds which may be urged on the applicant's behalf at the hearing of this application, I respectfully pray for an order that the applicant be brought up before this Honourable court and set at liberty' or other paragraphs in terms similar to this paragraph, could not be invoked to bring such an issue within its scope — they being too generalized to oblige any response from the respondents. I agree. Section 366 of the Criminal Procedure Code (FMS Cap 6) enjoins the applicant to state in his supporting affidavit '... so far as they are known, the facts relating to such detention, with the object of satisfying the Court ...'. It is thus inconsistent with common sense and the principles of logic for the applicant to take the stance of non-awareness of the very facts that he had sought to base his application with the sole and essential object of 'satisfying the Court'. By virtue of this provision in the Criminal Procedure Code (FMS Cap 6), the issues or particular grounds ought rightly to be taken by the applicants here, notwithstanding the Indian authority in *Ichhu Devi Choraria v Union of India*,¹¹ which says otherwise. See the decision in Criminal Application No 44-64-90, *Goh Thong Hua v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor*¹² which was affirmed by the Supreme Court in Criminal Appeal No 05-287-1990 and see also *Liew Kim Swee v Menteri Dalam Negeri Malaysia & Anor*¹³ affirmed in Supreme Court Criminal Appeal No 05-143-1990.

The three stages aforesaid wherein the detenu has to be informed or explained to are as follows:

- F (i) upon his arrest — under art 5(3) of the Constitution ('art 5(3)');
(ii) upon service of the detention order on him — under r 3(1)(a) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ('the DD Rules') (s 5(2) of the Ordinance); and
(iii) when the detenu is brought to the place of detention — under r 3(3) of the DD Rules (Rule 3(1) of the Emergency Public Order and Prevention of Crime (Procedure) Rules 1972 ('Emergency Procedure Rules')).

I shall now set out the points raised, on language, in seriatim with the applications — for the purpose of clarity — in the respective supporting affidavits and decide whether the respondents' answers are satisfactory.

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- (1) *In CA No 44-65-92*

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The affidavit of Lim Choon Hiok (encl 2) alleged breach of art 5(3) and r 3(1) of the Emergency Rules (but not s 5(2) of the Ordinance) both of which are satisfactorily answered in para 4 of the affidavit of the arresting officer Encik Ng Boon Hong (encl 4), and para 5 of the affidavit of the senior press officer Encik Nathan a/l NJ Pillai @ J Raghunathan (encl 11). Accordingly, this other point advanced on behalf of the applicant fails.

(2) In CA No 44-190-90

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The affidavit of Ong Sai Tin (encl 2) alleged breach of art 5(3) and r 3(3) of the DD Rules. In respect of art 5(3), the answer of the arresting officer to this is unsatisfactory in that in his affidavit, Insp Suhaimy bin Hashim (encl 5) had stated in para 4 that he had explained to the detenu in the language easy for the latter to understand but he did not state what language he used. I am not satisfied that art 5(3) had been complied with. This is fatal to the respondents.

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(3) In CA No 44-72-91

The affidavit of Woo Choy Kam (encl 2) alleged breach of art 5(3) and r 3(3) of the DD Rules. In respect of r 3(3) of the DD Rules, para 4 of the affidavit of the superintendent of the detention centre Encik Supri bin Hashim (encl 19) gave a satisfactory answer to this. However, in respect of art 5(3), the affidavit of PC Eric Peter Naysadorai (encl 18) who acted as an interpreter — read in conjunction with the affidavit of the arresting officer Insp Perumal a/l Alagan (encl 10) (which showed his uncertainty on the issue) — only said that he interpreted and explained in Cantonese the grounds of the arrest to the detenu as told by Insp Perumal. However, he did not say how, as an Indian he came to be proficient or that he was proficient in the said dialect used. As such, I am not satisfied that art 5(3) had been complied with. This is fatal to the respondents.

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(4) In CA No 44-100-91

The affidavit of Ah Lee @ Chua Ah Tee (encl 2) alleged breach of art 5(3) and r 3(3) of the DD Rules. I am not satisfied that r 3(3) has been complied with as the two affidavits of the superintendent of the detention centre (encs 8 and 23) Encik Nathan a/l LJ Pillai indicate that though he had explained to the detainee in Bahasa Malaysia yet he had also called one Chew Soon Ghee to explain again the contents to the detenu, which showed his (Encik Nathan's) own doubt as to whether the detenu understood him. However, Encik Chew Soon Ghee was not on affidavit to confirm that he did explain anything to the detenu. This is fatal to the respondents.

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(5) In CA No 44-127-91

The supporting affidavit of Ong Eng Hoe (encl 2) alleged breach of art 5(3) and r 3(3) of the DD Rules, both of which are satisfactorily answered in the affidavits of the arresting officer ASP Abdul Rahman bin Husin (para 4 encl 9) read in conjunction with the affidavit of DPC Tan Poh Shen (para 3 encl 19) and also the affidavit of Encik Donald Wee May Keun, the director of Penjara Pudu (para 5 encl 21).

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Though, a point was taken in Mr Karpal Singh's further written submission that when the detention order and other necessary documents were served on the detenu, D/Kpl Ow Chai Teik had explained to the detenu, yet the latter was not on affidavit to confirm this. I am nevertheless precluded

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- A** from considering this point as r 3(1) (a) of the DD Rules was not raised in encl 2. Accordingly, this ground fails.

(6) *In CA No 44-130-91*

- B** The supporting affidavit of Tan Swee Yong (encl 2) alleged breach of art 5(3) and r 3(3) of the DD Rules, both of which are satisfactorily answered in the affidavit of the arresting officer, Insp Zainuddin bin Abdul Aziz (para 4 encl 9) read in conjunction with that of D/Sgt Tan Hock Koh (para 3 encl 22) and also the affidavit of Encik Azmi bin Zainol Abidin, the superintendent of the rehabilitation centre (para 4 encl 24). A further point
- C** taken by Mr Karpal Singh in his written submission that the detention order reveals 'Teochew/Hokkien' dialect used when the order was served, which left a clear doubt as to which dialect was used. I would agree that this would be fatal to the respondents. However, r 3(1) of the DD Rules was not raised in encl 2. Accordingly this ground fails .

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(7) *In CA No 44-133-91*

- The supporting affidavit of Voon Hin Chean (encl 2) alleged breach of art 5(3) and also r 3(3) of the DD Rules both of which are satisfactorily answered in the affidavit of Insp Mohd Rodzi bin Rajab (para 4 encl 13)
- E** read in conjunction with that of DPC Woon Pack Chee (para 3 encl 18) and also the affidavit of Encik Nathan a/l NJ Pillai, the director of the rehabilitation centre (para 4 encl 19). Similarly, the point taken in Mr Karpal Singh's written submission that the detention order was interpreted by DPC Lim Pun Leang in Cantonese but there was no affidavit from the
- F** latter to confirm this, I am again precluded from considering this point as r 3(1) of the DD Rules was not raised in the encl 2. Accordingly, this ground fails.

(8) *In CA No 44-159-91*

- G** The supporting affidavit of Chai Chee Pang (encl 2) alleged breach of art 5(3) and r 3(3) of the DD Rules, both of which are satisfactorily answered in the affidavit of ASP Hamzah bin Md Jamil (para 4 encl 16) read in conjunction with that of DPC Chong Mook Ngian (para 3 encl 22) and also the affidavit of Encik Mohd Zawawi bin Abdul Rohani, the superintendent of the detention centre (para 3 encl 23). Accordingly, this
- H** ground fails.

(9) *In CA No 44-198-91*

- I** The supporting affidavit of Tam bte Razak (encl 2) alleged breach of art 5(3) and r 3(3) of the DD Rules, both of which are satisfactorily answered in the affidavits of Insp Ghazi bin Mohd Sawi (para 4 encl 11) and the superintendent of the rehabilitation centre, Encik Hassanudin bin Haji Harun (para 5 encl 14). Accordingly, this ground fails.

(10) *In CA No 44-219-91*

The supporting affidavit of Chooi Mooi Kwai (encl 2) alleged breach of r 3(3) of the DD Rules, which is satisfactorily answered in the affidavit of Encik Abdul Majid @ Jaafar bin A Bakar (para 4 encl 16) the assistant superintendent of the detention centre. Accordingly, this ground fails.

(11) *In CA No 44-39-92*

The supporting affidavit of Ng See Moi (encl 2) alleged breach of r 3(3) of the DD Rules which is satisfactorily answered in the affidavit of Encik Mohd Jaffar bin Haji Yaacob, the director of the detention centre (para 4 and 5 encl 19). Accordingly, this ground fails.

In respect of the second ground, another bone of contention raised in the written submission of Mr Karpal Singh is that, different or more than one language/dialect had been used in the various three stages aforesaid wherein it is necessary to inform or explain to the detenu. In my opinion, this, per se, would not be fatal to the respondents if their affidavits in reply clearly show that the detenu did understand the material requirements explained to him/her, as it is not uncommon for Malaysians to be proficient in more than one language/dialect.

For the above reasons, I allow the writ of habeas corpus to issue and order that the respective applicants in CA Nos 44-190-90, 44-72-91 and 44-100-91 be set at liberty forthwith. Whereas, habeas corpus writs are refused in CA Nos 44-127-91, 44-130-91, 44-133-91, 44-159-91, 44-198-91, 44-219-91 and 44-39-92 and the applications must be and are dismissed.

As this written judgment had been completed sometime earlier and before his court was informed by the senior federal counsel Encik Mahmud that the detention order against the applicant in CA No 44-65-92 had been suspended ('digantung' rather than been revoked) which was only this morning confirmed by Mr Shanmugam, my judgment is nevertheless read out as written rather than further deferred for its rehash. I however make no order in respect of CA No 44-65-92 save that I hereby strike out the application, which reduces all my above comments in respect of s 4(1) of the Ordinance and the application itself to that of academic interest only. This course of action that I adopt has been agreed to earlier this morning by the counsels and the senior federal counsel.

Order accordingly.

Reported by Aslam Zainuddin